IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

CRL.A.No. 64 of 1999()

ST.780/1993 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.

.....

APPELLANT/COMPLAINANT:

R.V.SANAL KUMAR,
PRATHIBHA, T.C. 30/982, PETTAH,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.BALAGOVINDAN

RESPONDENTS/ACCUSED & STATE:

1.C.KRISHNAN,
EMPLOYEE, STATE BANK OF INDIA,
VAZHUTHACADU, THIRUVANANTHAPURAM.

2..STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.B.SURESH- R1
PUBLIC PROSECUTOR SRI. C.K.SURESH - R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.64 OF 1999

Dated this the 31st day of May, 2007

JUDGMENT

This appeal is filed against the judgment in S.T.No. 780 of 1993 on the file of the Additional Chief Judicial Magistrate's Court Thiruvananthapuram. The appellant filed the complaint against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant - complainant was that the accused - first respondent herein borrowed from him an amount of Rs.25,000/-and issued Ext.P1 cheque towards discharge of the said liability which when presented to the bank for encashment was dishonoured with the endorsement "account closed". To prove the case against the first respondent, the appellant was examined as PW.1 and two other witnesses were examined as PWs.2 and 3 and Exts.P1 to P7 were produced. No oral or documentary evidence was adduced on the side of the defence. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr. P.C. He denied the allegations contained in the complaint. The trial court, on analysing the entire evidence, found that the cheque in question was issued by the accused after closing his account

with the bank and acquitted the accused.

3. Heard the learned counsel appearing on either side and perused the records made available before this Court. The specific case set up by the appellant before the court below was that the first respondent had borrowed from him an amount of Rs.25,000/- as personal loan on 25.3.1993 and issued Ext.P1 cheque on the same day and that the cheque when presented for encashment was dishonoued on the ground of closure of the account as well as insufficiency of funds in the account of the first respondent. The stand taken by the accused - first respondent was that he had no transactions with the appellant as alleged in the complaint. But he had not challenged the evidence adduced by the appellant as well as the other witnesses. The only ground for acquittal of the accused was that he had closed his account with the bank. This finding is against the judgment of this Court reported in **Vathsan v. Japahari, 2003(3) K.L.T. 972** . In the above judgment, a Division Bench of this Court held that **"situations where cheques have been issued against an account, which has been closed prior to the date of drawal of the cheque, shall also come within the fold of S.138 of the Act to attract criminal liability."** The Apex Court in an earlier judgment reported in **NEPC Micon Ltd. v. Magma Leasing Ltd., 1999(2) K.L.J. 59** also considered the question of

attraction of Section 138 of the Negotiable Instruments Act where a cheque was issued from an account already closed. In paragraph 8 of the above judgment, the Apex Court held as follows:

> "..... Dishonouring the cheque on the ground that the account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Secs. 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that the account is closed would be covered by the phrase `the amount of money standing to the credit of that account is insufficient to honour the cheque."

4. In the light of the above rulings of this Court as well as the Apex Court, this Court of the view that the judgment under appeal requires reconsideration. Accordingly, the impugned judgment is set aside and the matter is remanded to the court below for fresh consideration on the basis of the evidence already adduced after issuing notice to the first respondent.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 27.6.2007.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.64/1999

JUDGMENT

31ST MAY, 2007.